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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Petitions for Forbearance from)
Application of Section 272 of the)
Communications Act of 1934,)
as Amended, to Previously)
Authorized Services)

CC Docket No. 96-149
DA 98-690

AT&T CORP. OPPOSITION TO PETITION FOR RECONSIDERATION

Pursuant to the Public Notice released April 9, 1998, AT&T Corp. ("AT&T") hereby opposes BellSouth Corporation's ("BellSouth") April 2, 1998 petition for reconsideration of the Memorandum Opinion and Order¹ ("Order") in this proceeding. The instant Petition merely attempts to re-litigate issues already decided in this proceeding, and does so chiefly by selectively quoting the Order. BellSouth's claims are meritless and should be denied.

The Order held -- and BellSouth does not dispute -- that in the absence of forbearance, as of February 1997 the BOCs would have been required to provide both E911 and reverse directory assistance ("RDA") via a separate affiliate that complied with all of the requirements of § 272.² The Commission granted the BOCs' request for forbearance from

¹ Petitions For Forbearance From The Application Of Section 272 Of The Communications Act Of 1934, As Amended, To Certain Activities, Memorandum Opinion and Order, CC Docket No. 96-149, DA 98-220, released February 6, 1998 ("Order").

² See 47 U.S.C. §§ 272(a)(2)(C), 272(h).

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§ 272's separate affiliate requirement for those services, but expressly conditioned that grant on a BOC's agreement to make available to unaffiliated entities all of the listing information it utilizes for E911 and RDA, on the same rates, terms and conditions the BOC charges or imposes for use of those data for its own E911 or RDA services. Although BellSouth complains that the Order imposes unjustifiably demanding requirements, it offers no arguments that were not previously considered – and properly rejected – in the Order. In sum, the Petition fails to offer anything that even suggests the Commission erred in applying the § 10 criteria to the services at issue.

I. BELLSOUTH'S CLAIM THAT THE COMMISSION APPLIED AN IMPROPER NONDISCRIMINATION STANDARD IS GROUNDLESS AND CONFLICTS WITH THE PLAIN LANGUAGE OF THE ORDER

BellSouth's fundamental argument is that the Commission erred by employing the wrong nondiscrimination standard in its § 10 inquiry. According to BellSouth, the Commission employed § 272(c)(1)'s nondiscrimination standard, rather than the § 10(a)(1) prohibition against "unjustly or unreasonably discriminatory" practices.³ In fact, the Order makes plain at several points that the Commission applied the § 10(a)(1) standard -- although BellSouth omits any reference to those statements from its Petition.

³ The Commission has never determined whether § 10(a)'s prohibition of "unjust or unreasonable" discrimination imposes a standard that is less stringent than that required by § 272(c)(1). The Non-Accounting Safeguards Order did rule, however, that § 272(c)(1) imposes "a more stringent standard" than § 202(a), which prohibits "any unjust or unreasonable discrimination . . . , or . . . any undue or unreasonable preference or advantage." See Implementation of Non-Accounting Safeguards of Sections 271 and 272 of the Telecommunications Act of 1934, as Amended, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 21905, 21998 (1996).

Absent forbearance, a BOC would be required to provide E911 via a separate affiliate that complied with the requirements of § 272.⁴ The Order readily found that if § 272 were applied to E911, a BOC's failure to provide "unaffiliated entities with all of the subscriber listings that an affiliate of the BOC uses to provide E911 services" would violate § 272(c)(1).⁵ The Commission then went on to make plain that it was conducting the very inquiry BellSouth accuses it of failing to perform: "We must consider, however, whether this practice would be unjustly or unreasonably discriminatory within the meaning of section 10(a)(1). We conclude that it would be."⁶

BellSouth's Petition quotes only the first of these two sentences, omitting the Commission's statement, underlined in the quoted passage above, that a BOC's failure to provide E911 data to requesting carriers on the same terms and conditions that it provided them to itself would violate § 10(a)(1).⁷ The Petition also fails to make any reference to the Commission's unequivocal conclusion, in the next paragraph of the Order, that "until [the BOCs] provide such access at those rates, terms, and conditions, the BOCs' subscriber listing information practices will be unjustly or unreasonably discriminatory within the meaning of section 10(a)(1)."⁸ Based on its findings that § 10(a)(1) required that result, the Commission then held that it would

⁴ See Order, ¶ 20. While a BOC could provide on an integrated basis E911 services that did not cross LATA boundaries, as currently configured those systems are interLATA information services.

⁵ Id., ¶ 31.

⁶ Id. (emphasis added)

⁷ See Petition, p. 4.

⁸ Order, ¶ 32 (emphasis added).

condition our forbearance from the application of section 272's separate affiliate requirement on each BOC's making available to unaffiliated entities all listing information, including unlisted and unpublished numbers as well as the numbers of other LECs' customers, that it uses to provide E911 services.⁹

Indeed, AT&T's and MCI's comments in this proceeding focused chiefly on the fact that it would be unreasonably discriminatory to permit the BOCs to deny other carriers access to E911 and RDA listing information by providing those services on an integrated basis, and expressly requested that the Commission hold that § 10 would not permit that result.¹⁰ The issues the Petition raises thus were thoroughly briefed by the parties and directly addressed in the Order, and there is simply no basis for the Commission to revisit them.

The Commission's treatment of RDA closely parallels its approach to E911, and BellSouth's claims with respect to that service are therefore similarly unavailing. After finding that, in the absence of the § 272 safeguards, BellSouth potentially could leverage its dominant position in its local exchange territory into the market for RDA services, the Order held that § 10(a)(1) required that BOC to permit requesting carriers to obtain the data it used to support its RDA services on the same terms and conditions that it provided them to itself:

Based on the record before us, we conclude that these competitive advantages stem from BellSouth's dominant position in the provision of local exchange services in the BellSouth region. These advantages will persist if BellSouth continues to deny unaffiliated entities access to all of the listing information that it uses to provide reverse directory services or if BellSouth fails to provide such access at the same rates, terms, and conditions, if any, that it charges or imposes on itself. We therefore conclude that, until it provides such access at those rates, terms, and conditions, BellSouth's subscriber listing information practices will be unjustly or unreasonably discriminatory within the meaning of section 10(a)(1).¹¹

⁹ Id., ¶ 34.

¹⁰ See, e.g., AT&T July 22, 1997 Comments, pp. 4-5, 9; MCI July 22, 1997 Comments, pp. 9-10.

¹¹ Order, ¶ 82 (emphasis added, footnotes omitted).

Unable to come to grips with the actual text of the Order, BellSouth is reduced to arguing that the Commission “in reality” applied the § 272 standard rather than § 10(a)(1).¹² Yet, as shown above, the Petition’s version of “reality” fails to address (or even to mention) the Order’s plain language. Indeed, the sole support BellSouth offers for its claim that the Commission applied a standard to E911 that was different than the one it expressly stated that it employed consists of a single sentence fragment from the Order: the statement that “the conditions set forth in paragraph 34, effectively impose the non-discrimination safeguards contained in section 272(c)(1) as they relate to the BOCs’ E911 services....”¹³ This passage provides no support for BellSouth’s argument.

Read in conjunction with the Order’s prior statements, it is plain that the Commission did not intend the passage that BellSouth quotes to suggest that its conditions were not founded on the requirements of § 10. As shown above, the Order previously had specifically concluded that § 10(a)(1)’s nondiscrimination provisions would require a BOC to make E911 data available to other carriers on the same terms and conditions on which it provided that information to itself. In fact, the passage BellSouth quotes actually rejects MCI’s request that it condition forbearance on the BOCs’ compliance with § 272(c)(1), on the ground that in the matter before it, § 10(a)(1) required the same result that § 272(c)(1) would have required -- i.e., nondiscriminatory access to E911 listing data.¹⁴

¹² Petition, p. 4.

¹³ Order, ¶ 39 (quoted in Petition, p. 4).

¹⁴ Although the Order makes plain that § 10(a)(1) required the conditions it imposed, nothing in the 1996 Act prohibits the Commission from forbearing from some subsections

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BellSouth also quotes a single sentence fragment in support of its claim as to RDA: “[W]e conclude, consistent with our determination in section III.D.1.b, supra, that we should forbear from application of section 272 to BellSouth's interLATA reverse directory services, yet effectively impose the non-discrimination safeguards contained in section 272(c)(1)'s non-discrimination safeguards through appropriate conditions.”¹⁵ However, BellSouth's quotation of this passage omits the Order's reference to section III.D.1.b, which discusses the Commission's conclusion that § 10(a)(1) requires BOCs to permit access to E911 data on the same terms and conditions that would be required by § 272(c)(1). The Order's discussion of RDA expressly invokes the rationale the Commission offered for conditioning E911 forbearance pursuant to § 10(a)(1), and BellSouth's argument as to RDA accordingly fails for the same reasons as its claim concerning E911.

In all events, if the Commission were to conclude that: (i) despite its express statements to the contrary, the Order applied the § 272(c)(1) nondiscrimination standard rather than § 10(a)(1); and (ii) it would not be “unjust and unreasonable” for a BOC to provide E911 or RDA data to competing carriers on less favorable terms than it provides them to itself, it would be

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of a statutory provision while electing to continue others in effect. In its comments in the instant proceeding, AT&T contended that the Commission could forbear from § 272's separate affiliate requirement while continuing § 272(c)'s nondiscrimination requirements, while the BOCs argued that forbearance from the separate affiliate requirement would perforce nullify sections 272(c) and (e). Compare, e.g., AT&T July 22, 1997 Comments, p. 3 with Bell Atlantic & NYNEX August 5, 1997 Joint Reply Comments, pp. 1-2 and U S West May 6, 1997 Reply Comments, p. 2. Thus, even if BellSouth were correct that the order applied (or did not forbear from applying) § 272(c)(1) to the BOCs, its Petition does nothing more than attempt to re-litigate a point that has already been briefed by the parties and resolved by the Commission's action.

¹⁵ Order, ¶ 83 (quoted in Petition, p. 4).

required to rescind its grant of forbearance and apply § 272 to those services. As the Order recognized, to forbear, the Commission “must determine that each of the three forbearance criteria set forth in section 10 are met.”¹⁶ However, the Order’s finding that the § 10(a)(3) “public interest” criterion was satisfied was expressly contingent on the BOCs’ compliance with the conditions it established: “we conclude that forbearance from the application of section 272 to the BOCs’ E911 services would serve the public interest, so long as forbearance is conditioned as stated above.”¹⁷ The Commission’s decision to forbear from § 272 for RDA was similarly contingent:

[W]e conclude that we may forbear from the application of section 272 to BellSouth’s reverse directory services only if we condition that action on BellSouth’s providing any other entity with all listing information that it uses to provide its reverse directory services at the same rates, terms, and conditions, if any, BellSouth charges or imposes on its reverse directory operations.¹⁸

Accordingly, if the Commission were to conclude for any reason that § 10 does not permit it to require the conditions established in the Order, then the statutory prerequisites for forbearance are not satisfied as to E911 and RDA, and the BOCs therefore must comply with the full panoply of § 272 requirements in order to offer those services on an interLATA basis.

¹⁶ Order, ¶ 16.

¹⁷ Id., ¶ 51 (emphasis added); see also id., ¶ 2 (“We conclude, subject to certain conditions set forth in sections III.D.1. and IV.D.1., below, that the forbearance criteria in section 10 are met for the Commission to forbear from applying section 272 to the BOCs’ E911 services and BellSouth’s reverse directory services, and we permit petitioners to continue to provide those services on an integrated basis. We, therefore, grant the BOCs’ petitions, subject to those conditions.”) (emphasis added).

¹⁸ Id., ¶ 77 (emphasis added).

II. BELLSOUTH'S ATTACKS ON THE SPECIFIC CONDITIONS IMPOSED IN THE ORDER ARE MERITLESS

BellSouth seeks to bootstrap from its mistaken premise that the Order applied an incorrect nondiscrimination standard to rehash arguments that were thoroughly briefed by the parties and resolved in the Order. The Petition complains that the Commission should revise the conditions it imposed on its forbearance grant because it never tested them against § 10(a)(1)'s "unjust and unreasonable" standard. BellSouth's claim is simply untenable. As shown above, the Commission did apply the correct standard in interpreting § 10(a)(1), as the Order unequivocally stated. Accordingly, the Commission should reject BellSouth's attempt to re-open the conditions imposed in the Order.

Even accepting arguendo the Petition's claim that the Order applied the incorrect standard, BellSouth presents nothing that warrants reconsideration. The Petition attempts to argue that because E911 and RDA services historically have been provided on an integrated basis, BellSouth cannot (for reasons it never specifies) provide requesting carriers with a copy of the listing information databases that it uses to provide those services. That claim cannot be credited. The Petition offers nothing more than unsupported, generalized complaints that the Order's conditions are more "complex" than the Commission realizes, providing no evidence that BellSouth cannot comply with the limited conditions the order requires.¹⁹ Further, BellSouth's

¹⁹ Indeed, despite BellSouth's generalized claims that it cannot timely comply with the Commission's mandate that it share listing data, it does not seek a waiver or stay of the Order and does not even attempt to make the showing required to support such relief, but merely suggests elliptically that the Commission should issue a waiver on its own motion. See Petition, p. 7, n.17 & p. 9, n.21. If BellSouth cannot comply with the Order's requirements, it must seek a waiver of those provisions -- and must make the requisite showing to support a waiver in order to do so. Unless and until BellSouth obtains such

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complaints and its assertion that E911 is somehow "unique" ring utterly hollow in light of the fact that the conditions the Order imposes are far less onerous than the § 272 separation requirements to which Congress subjected E911 and RDA when it enacted the 1996 Act.

CONCLUSION

For the foregoing reasons, the Commission should deny BellSouth's petition for reconsideration of the Memorandum Opinion and Order in the above-captioned proceeding.

Respectfully submitted,

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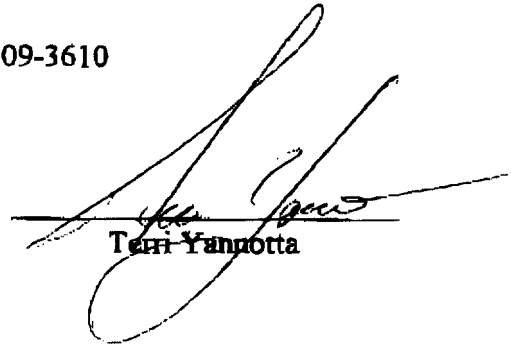
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relief, its Petition in no way affects its obligations to comply with the Order. See 47 U.S.C. § 405(a); 47 C.F.R. § 1.429(k).

CERTIFICATE OF SERVICE

I, Terri Yannotta, do hereby certify that on this 11th day of May, 1998, a copy of the foregoing "AT&T Corp. Opposition To Petition For Reconsideration" was mailed by U.S. first class mail, postage prepaid, to the party listed below.

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Terri Yannotta

May 11, 1998